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**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

JEFF HANCOCK, Individually and on) Case No. 2:19-cv-02602
Behalf of All Others Similarly Situated,)
) **CLASS ACTION COMPLAINT**
Plaintiff,) **FOR:**
)
v.) **1. VIOLATIONS OF**
) **47 U.S.C. § 227(b)(1)(A)(iii)**
JACKSON HEWITT TAX SERVICE) **2. VIOLATIONS OF**
INC.,) **47 C.F.R. § 64.1200(d)**
Defendant.)
) **DEMAND FOR JURY TRIAL**

1 7. Non-party CallFire, Inc. d/b/a EZ Texting (“CallFire”) is a Delaware
2 corporation headquartered in this District, at 1410 2nd Street, Suite 200, Santa
3 Monica, California 90401. CallFire, thus, is a citizen of Delaware and California.
4 Jackson Hewitt hired CallFire to send the texts that are the subject of this case,
5 and CallFire sent those texts from its offices within this District.

6 **JURISDICTION AND VENUE**

7 8. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331
8 because Plaintiff’s claims arise under federal law.

9 9. Additionally, the Court has subject matter jurisdiction pursuant to
10 the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. 1332(d)(2). The
11 matter in controversy exceeds \$5,000,000 in the aggregate, exclusive of interest
12 and costs, as each member of the proposed class of at least tens of thousands is
13 entitled to up to \$1,500 in statutory damages for each call that has violated the
14 TCPA. Further, Plaintiff alleges a nationwide class, which will result in at least
15 one class member residing in a state different from Defendant.

16 10. Venue is proper under 28 U.S.C. § 1391(b)(2) because a substantial
17 part of the events and omissions giving rise to Plaintiff’s claims occurred in this
18 District.

19 **TCPA BACKGROUND**

20 11. In 1991, Congress enacted the TCPA to regulate the explosive
21 growth of the telemarketing industry. In so doing, Congress recognized that
22 “[u]nrestricted telemarketing ... can be an intrusive invasion of privacy[,]” and
23 found that “[b]anning such automated or prerecorded telephone calls ... is the
24 only effective means of protecting telephone consumers from this nuisance and
25 privacy invasion.” Telephone Consumer Protection Act of 1991, Pub. L. No.
26 102-243, §§ 2(5), 2(14) (1991) (codified at 47 U.S.C. § 227).

27 12. Some of the TCPA’s most stringent restrictions pertain to calls
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1 placed to cell phones: The statute broadly bans the making of any non-emergency
2 call using an automatic telephone dialing system or an artificial or prerecorded
3 voice to any telephone number assigned to a cellular telephone service, unless
4 with the “prior express consent” of the called party. 47 U.S.C. §
5 227(b)(1)(A)(iii); *see also Soppet v. Enhanced Recovery Co.*, 679 F.3d 637, 638
6 (7th Cir. 2012) (“An automated call to a landline phone can be an annoyance; an
7 automated call to a cell phone adds expense to annoyance.”). The FCC—charged
8 by Congress to develop the rules and regulations implementing the TCPA, *see* 47
9 U.S.C. § 227(b)(2)—has further strengthened this prohibition; for autodialed or
10 prerecorded voice telemarketing calls made to cell phones on or after October 16,
11 2013, prior express *written* consent is required. *See* 47 C.F.R. § 64.1200(a)(2). A
12 text message is a “call” under the TCPA. *In re Rules & Regs. Implementing the*
13 *TCPA*, 18 FCC Rcd. 14014, 14115 ¶ 165 (2003).

14 13. The TCPA also prohibits initiating any telemarketing call unless the
15 person or entity has instituted procedures for maintaining a list of persons who
16 request not to receive telemarketing calls made by or on behalf of that person or
17 entity. 47 C.F.R. § 64.1200(d). This includes, *inter alia*, having a written policy,
18 available upon demand, for maintaining a do-not-call list, training personnel
19 engaged in any aspect of telemarketing on the existence and use of the do-not-call
20 list, identifying the name of the caller during each call, the name of the person or
21 entity on whose behalf the call was made, and associated phone or address
22 information, and actually honoring do-not-call requests within a reasonable time
23 from the date such request is made. *Id.*

24 14. Further, a person or entity can be liable for calls made on its behalf
25 in violation of the TCPA, even if that person or entity did not directly dial such
26 calls. *See, e.g., In re Rules & Regs. Implementing the TCPA*, 10 FCC Rcd.
27 12391, 12397 ¶ 13 (1995) (explaining that the FCC’s “rules generally establish
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1 that the party on whose behalf a solicitation is made bears ultimate responsibility
2 for any [TCPA] violations”).

3 FACTS

4 15. On about March 27, 2019, Jackson Hewitt sent Plaintiff a text
5 message to his cell phone through its texting vendor, CallFire. A partial screen
6 shot of this text message is attached as Exhibit A.

7 16. Around the time of the text, Plaintiff was dealing with a family
8 tragedy, and the text added to the chaos of life during this difficult time.

9 17. This text message was sent for the purpose of encouraging Plaintiff
10 to purchase Jackson Hewitt goods and services.

11 18. This was not the first text Defendant had sent Plaintiff. Jackson
12 Hewitt sent Plaintiff's cell phone number several similar texts in the four years
13 prior to the filing of this case.

14 19. In March 2019, Plaintiff called his local Jackson Hewitt office to
15 complain. The person with whom Plaintiff spoke stated that the local office had
16 received numerous complaints about these texts, and that they had come from the
17 “corporate office.” The employee at the local office promised to relay Plaintiff's
18 concerns, and request not to be called, to “corporate.”

19 20. Although the texts he received did not instruct him to do so, Plaintiff
20 also tried reply-texting “Stop” in an attempt to make the texts cease.

21 21. Jackson Hewitt sent the texts that are the subject of this case using an
22 automatic telephone dialing system, as that term is defined in the TCPA.

23 22. The texts that Jackson Hewitt sent Plaintiff were form
24 communications that were sent to thousands of consumers with identical - or
25 nearly identical - verbiage.

26 23. The texts that Jackson Hewitt sent Plaintiff were sent in “blasts” of
27 multiple texts at once.

1 24. Upon information and belief, the texts were sent as follows: Jackson
2 Hewitt provided – or uploaded – a list of phone numbers and other consumer
3 information to CallFire, through the Internet.

4 25. Defendant set the parameters for texting, including computer
5 commands and settings designed to prevent the sending of texts outside
6 permissible contact hours, through a CallFire web portal. CallFire’s computers
7 used the data Jackson Hewitt provided to, for example, ensure that texts were not
8 sent too early on the West Coast, or too late on the East Coast. This function is
9 typically called “curfew.”

10 26. CallFire’s computers stored the numbers Jackson Hewitt provided,
11 and automatically sent the texts – *i.e.*, made the calls that are the subject of this
12 case – according to Jackson Hewitt’s instructions.

13 27. CallFire’s computers generated a sequence for sending the texts,
14 based upon the demographic and other information Jackson Hewitt provided, and
15 then automatically dialed those numbers.

16 28. Plaintiff and the class were damaged by these text messages, as their
17 privacy was invaded (e.g., intrusion upon seclusion and trespass), they
18 temporarily lost use of their phones, and they were forced to deal with these
19 illegal messages.

20 **CLASS ACTION ALLEGATIONS**

21 29. As authorized by Rule 23 of the Federal Rules of Civil Procedure,
22 Plaintiff brings this action on behalf of himself and a Rule 23(b)(3) (or, in the
23 alternative, Rule 23(b)(2)) class consisting of:

24 All persons in the United States (i) to whom a text was sent for the
25 purpose of encouraging the purchase of Jackson Hewitt goods or
26 services (ii) to a cellular telephone number, (iii) using the same or
27 similar texting system as was used in the calls to Plaintiff, where (iv)

1 Jackson Hewitt did not have a signed writing authorizing automated
2 telemarketing texts from Jackson Hewitt at the time such calls were
made (the “Class”).

3 Plaintiff alleges a sub-class of persons who, like Plaintiff,
4 received two or more texts within a 12-month period (the
5 “Sub-Class”).

6 The Class and Sub-Class are collectively referred to herein as the “Class”.

7 30. Upon information and belief, Jackson Hewitt texted more than 1,000
8 cellular telephone numbers for the purpose of encouraging the purchase of its
9 goods and services in 2019, using the same or similar texting system as was used
10 in the calls to Plaintiff, without prior written authorization.

11 31. Common questions of law or fact exist as to all members of the Class
12 and Sub-Class, and predominate over any questions solely affecting any
13 individual member, including Plaintiff. Such common questions include, but are
14 not limited to, the following:

- 15 a. Whether the texts at issue used an “automatic telephone
16 dialing system” or an “artificial or prerecorded voice” as such
17 terms are defined or understood under the TCPA and
18 applicable FCC regulations and orders;
- 19 b. Whether Jackson Hewitt had “prior express written consent”
20 to contact Plaintiff and the other members of the Class when
21 causing calls to be made to such persons’ cell phones using an
22 automatic telephone dialing system or an artificial or
23 prerecorded voice, pursuant to 47 C.F.R. § 64.1200(f)(8);
- 24 c. Whether Jackson Hewitt implemented proper Do Not Call
25 procedures under 47 C.F.R. § 64.1200(d); and
- 26 d. Damages, including whether Defendant’s violations were
27 performed willfully or knowingly such that Plaintiff and the
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1 other members of the Class are entitled to trebled damages
2 under 47 U.S.C. §§ 227(b)(3) or 227(c)(5).

3 32. Plaintiff's claims are typical of the claims of the other members of
4 the Class. The factual and legal bases of Jackson Hewitt's liability to Plaintiff
5 and the other Class members are the same: Defendant violated the TCPA by
6 sending texts to each member of the Class, including Plaintiff, using an automatic
7 telephone dialing system, without the requisite permission.

8 33. Plaintiff will fairly and adequately protect the interests of the Class.
9 Plaintiff has no interests that might conflict with the interests of the Class, is
10 interested in pursuing these claims vigorously, and has retained counsel
11 competent and experienced in class and complex litigation, including with regard
12 to the claims alleged herein.

13 34. Class action treatment is superior to all other alternatives for the fair
14 and efficient adjudication of the controversy alleged herein. Such treatment will
15 permit a large number of similarly situated persons to prosecute their common
16 claims in a single forum simultaneously, efficiently, and without the duplication
17 of effort and expense that numerous individual action would entail. There are, on
18 information and belief, thousands of members of the Class, such that joinder of all
19 members is impracticable.

20 35. No difficulties are likely to be encountered in the management of
21 this action that would preclude its maintenance as a class action, and no superior
22 alternative exists for the fair and efficient adjudication of this controversy.

23 36. Defendant has acted and failed to act on grounds generally
24 applicable to Plaintiff and the other members of the Class, thereby making relief
25 appropriate with respect to the Class as a whole. Prosecution of separate actions
26 by individual Class members, should they even realize that their rights have been
27 violated, would likely create the risk of inconsistent or varying adjudications with
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1 respect to individual Class members that would establish incompatible standards
2 of conduct.

3 37. The identity of the Class is, on information and belief, readily
4 identifiable from Defendant's and its vendors' records. CallFire's texting
5 platform permits users to easily do sophisticated queries that will identify Class
6 members. Moreover, Jackson Hewitt knows – or should know – which phone
7 numbers it texted. Plaintiff thus anticipates issuing direct notice to all members
8 of the Class identifiable through Defendant's records or those of its vendors,
9 including by means of a reverse-lookup, if necessary, supplemented by internet or
10 other form of publication notice.

11 **COUNT I**

12 **Violations of the TCPA, 47 U.S.C. § 227** 13 **(Autodialed and/or Artificial or Prerecorded Voice Call Violations)**

14 38. Plaintiff re-alleges and incorporates the foregoing allegations as if
15 fully set forth herein.

16 39. It is a violation of the TCPA to make “any call (other than a call
17 made for emergency purposes or made with the prior express consent of the
18 called party) using any automatic telephone dialing system or an artificial or
19 prerecorded voice ... to any telephone number assigned to a ... cellular telephone
20 service” 47 U.S.C. § 227(b)(1)(A)(iii).

21 40. Jackson Hewitt initiated, or caused to be initiated, calls to the
22 cellular telephone numbers of Plaintiff and the other members of the Class by
23 using an automatic telephone dialing system, or an artificial voice.

24 41. These calls were made without regard to whether or not Defendant
25 had previously obtained proper consent or permission from the called party to
26 make such calls. Jackson Hewitt did not have prior express consent to call the cell
27 phones of Plaintiff and the other members of the Class when the calls were made.
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1 42. The texts Plaintiff and other Class members received did not
2 properly explain how to opt-out of future texts, pursuant to 47 C.F.R. §
3 64.1200(b).

4 43. Defendant's calls and violations were negligent; alternatively, they
5 were willful or knowing.

6 44. On information and belief, some of the calls to Plaintiff and the
7 Class were made by vendors of Defendant. Defendant is liable for those calls, too.

8 45. As a result of Defendant's conduct and pursuant to Section 227(b)(3)
9 of the TCPA, Plaintiff and the other members of the Class were harmed and are
10 each entitled to a minimum of \$500 in damages for each violation. Plaintiff and
11 the Class are also entitled to an injunction against future calls. 47 U.S.C. §
12 227(b)(3).

13 46. Jackson Hewitt has been sued for TCPA violations before, and
14 knows about the TCPA's restrictions. It elected to send the text messages
15 described herein in spite of its knowledge and prior experience.

16 47. Because Defendant knew or should have known that Plaintiff and the
17 other members of the Class had not given prior express consent to receive its text
18 message calls to their cell phones—and/or willfully caused such calls to be made
19 to the cell phones of Plaintiff and the other members of the Class without prior
20 express consent—the Court should treble the amount of statutory damages
21 available to Plaintiff and the other members of the Class, pursuant to Section
22 227(b)(3) of the TCPA.

23 48. Moreover, because Jackson Hewitt has been sued for TCPA
24 violations before but failed to cease the illegal activity, it is clear that both money
25 damages and injunctive relief are necessary to wrench proper compliance.

26 WHEREFORE, Plaintiff, individually and on behalf of the Class,
27 requests that the Court appoint Plaintiff as Class representative, appoint his
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counsel as Class Counsel, and enter judgment against Defendant for:

- A. Certification of the Class as alleged herein;
- B. A declaration that Defendant violated the TCPA as to Plaintiff and the Class;
- C. An injunction to prevent further violations;
- D. Damages pursuant to 47 U.S.C. § 227(b)(3), as applicable;
- E. Costs, expenses, and attorneys' fees, to the extent permitted by law; and
- F. Such other or further relief as the Court deems just and proper.

COUNT II

**Violations of the TCPA, 47 U.S.C. § 227
(Internal Do Not Call Violations)**

49. Plaintiff re-alleges and incorporates the foregoing allegations as if fully set forth herein. Plaintiff brings this Count II on behalf of himself and the Sub-Class.

50. The TCPA, 47 C.F.R. § 227(d), prohibits all telemarketing phone calls and text messages, unless the caller has, and honors, a written internal Do Not Call policy.

51. Jackson Hewitt's internal Do Not Call policy is posted on the Internet, but the policy states that it applies to Nevada residents only. *See Exhibit B.*

52. The policy states: "Depending on where you live, you may have additional privacy protections under some state laws."

53. While it is true that some states may afford internal Do Not Call protections, this written policy fails to notify consumers of their rights under federal law.

54. Even if Jackson Hewitt has another internal Do Not Call policy

1 designed to deal with the TCPA, the false statements in Exhibit B regarding
2 consumers' Do Not Call rights, which are prominently posted on the Internet,
3 overshadow any such policy: Of course, the federal TCPA requires *nationwide*
4 compliance, not just state-by-state compliance.

5 55. Because Jackson Hewitt's internal Do Not Call policy is
6 noncompliant with 47 C.F.R. § 64.1200(d), Jackson Hewitt was not allowed to
7 send any text messages or make any calls, the purpose of which were to solicit
8 sale of goods or services.

9 56. Plaintiff received more than one text on his cell phone within a
10 12-month period while Jackson Hewitt did not have proper Do Not Call policies.
11 Indeed, as described above, when Plaintiff called to inquire about the texts, the
12 local office took a long time to figure out what was going on, making it apparent
13 that it had not been properly trained as to this telemarketing, or requests not to
14 call.

15 57. Plaintiff and the Sub-Class were damaged by Jackson Hewitt's
16 failure to maintain a proper internal Do Not Call policy, and/or to adhere to the
17 one it had. Their privacy was invaded in receiving unsolicited calls, and they
18 were not provided adequate or legal explanation of how to cause Jackson Hewitt
19 to stop.

20 58. The violations described herein were reckless or intentional.
21 Jackson Hewitt knows about the TCPA's requirements to have a valid internal Do
22 Not Call policy, but has elected not to do so.

23 WHEREFORE, Plaintiff, individually and on behalf of the Sub-
24 Class, requests that the Court appoint him as Class representative, appoint
25 his counsel as Class Counsel, and enter judgment against Defendant for:

26 A. Certification of the Sub-Class as alleged herein;

27 B. A declaration that Defendant violated the TCPA as to Plaintiff
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and the Sub-Class;

C. An injunction to prevent further violations;

D. Damages pursuant to 47 U.S.C. § 227(c)(5), as applicable;

E. Costs, expenses, and attorneys' fees, to the extent permitted by law; and

F. Such other or further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff requests a jury trial as to all claims so triable.

Respectfully submitted,

JEFF HANCOCK, Individually and on
Behalf of All Others Similarly Situated

Dated: April 5, 2019

By: /s/ Kolin C. Tang
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